

PLANNING AND ZONING COMMISSION
STAFF REPORT

April 18, 2013



Rezoning case no. RZ13-03: Carrabba Brothers, Ltd.

CASE DESCRIPTION: a request to change the zoning classification from Commercial District (C-3) to Industrial District (I)

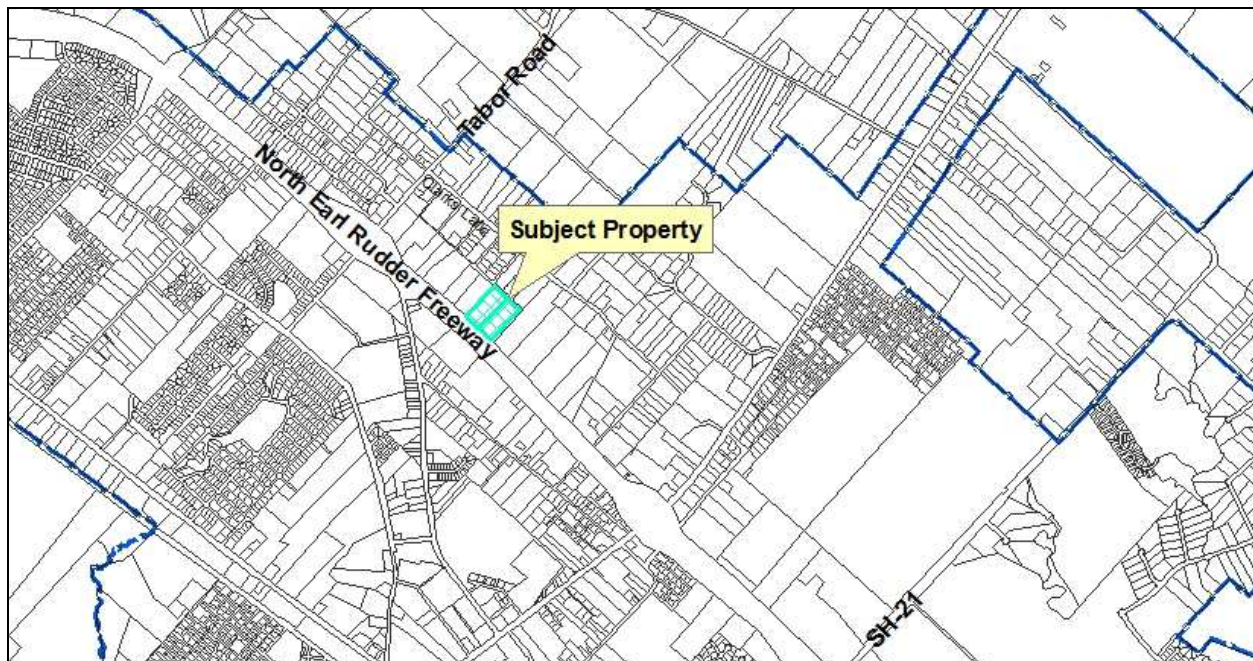
LOCATION: 9.654 acres of land adjoining the northbound frontage road of North Earl Rudder Freeway (State Highway 6) between Colson and Tabor Roads, being Lots 2 and 3 in Block 2 of Progress Park Subdivision – Phase 2

EXISTING LAND USE: vacant acreage

APPLICANT(S): Mark Carrabba of Carrabba Brothers, Ltd.

STAFF CONTACT: Randy Haynes, Project Planner

SUMMARY RECOMMENDATION: Staff recommends **denying** Industrial zoning as requested. Staff believes there is a better alternative to rezoning this property that will both accommodate the property owner and also preserve sound planning principals along this entry corridor.



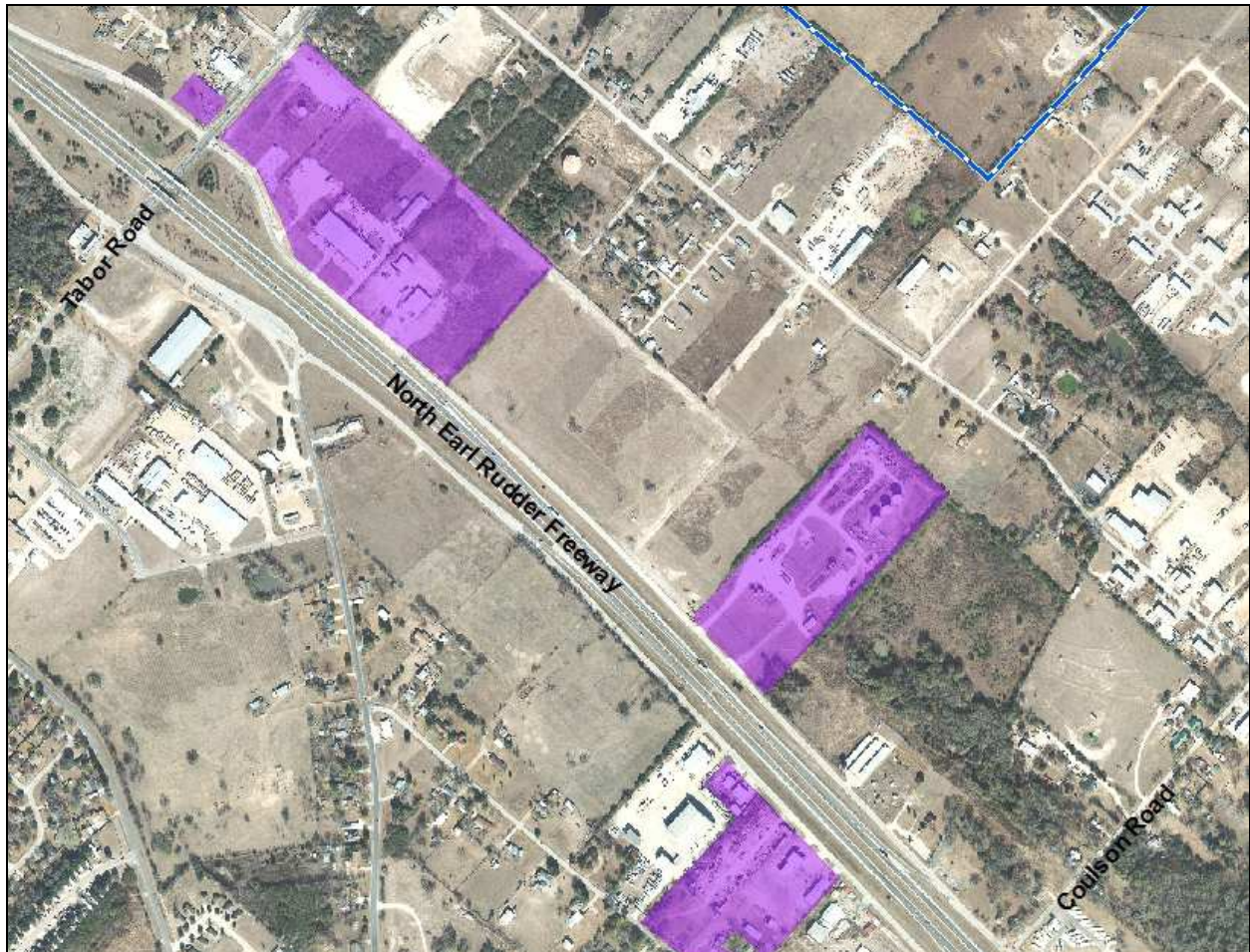
Zoning:



2011 Aerial:



Entry Corridor Properties Where Industrial Use is Potentially Allowed:



BACKGROUND:

The applicant is requesting the rezoning of these approximately 9.6 acres from Commercial District (C-3) to Industrial District (I). The request is made to facilitate marketing of the currently vacant property to users requiring outdoor storage. Currently, the only standard Bryan zoning district where outdoor storage is permitted is Industrial District (I). The subject property has frontage on the North Earl Rudder Freeway frontage road. Existing industrial development is very limited on property near the subject tract although the land on within several hundred feet of the subject tract has been zoned for industrial use for many years. Adjacent uses include scattered single-family residences in the MU-1 District to the northeast, an oil storage facility to the southeast and a new retail development to the northwest.

On February 5, 2009 the P&Z considered a request to change the zoning of the subject property, which at the time was part of a larger 31 acre parcel, from A-O District to I District (case no. RZ09-02). At that time the staff recommendation to the P&Z was the same as it is for this case, for the same reasons. After a public hearing where comments were offered by the developer and a number of area property owners, the Commission voted unanimously to recommend to the City Council that the request for industrial zoning be denied. An excerpt from the approved minutes of that meeting as it pertained to that request is attached at the end of this staff report.

Subsequent to the denial by the P&Z, on June 3, 2010, the developer requested a change of zoning from A-O to C-3 (case no. RZ10-12). The commission found C-3 to be the most appropriate zoning designation for land in this specific area and unanimously voted to recommend approval to the City Council. Since the rezoning of the property, four of the five lots in the Progress Park Subdivision have sold and one has been developed.

The specific use that the applicant wishes to place on the subject property is not one of an industrial nature, however requires outdoor storage of merchandise. The Industrial District is the only zoning classification where any type of outdoor storage is allowed.

This case was originally scheduled for consideration by the Commission during its meeting on April 4, 2013, but was rescheduled at the applicants' request.

RELATION TO BRYAN'S COMPREHENSIVE PLAN:

Bryan's Comprehensive Plan is the framework for the establishment of zoning and other regulatory tools. The Planning and Zoning Commission shall use the plan as a decision guide relating to adopted planning policies and goals when making its recommendation regarding this proposed zoning change. The following excerpts from the Comprehensive Plan relate to this case:

5.5 Land Use Policies / Use-Specific Land Use Policies:

Industrial land provides locations for manufacturing activities where impacts to less intense uses can be substantially buffered. These uses should be located in areas that are along arterial thoroughfares, in proximity to freeways, rail lines and/or areas with access to airports or other transportation outlets.

Office/Light Commercial land provides locations for lower intensity commercial activities that serve local needs. These uses should be located in areas that are at points of high visibility.

7.3 Community Appearance – Goal and Objectives

The following goal, objectives and action statements were developed to address the overall appearance and function of the City of Bryan for the next 20 years.

GOAL: PROVIDE AN ATTRACTIVE PLACE TO LIVE, WORK AND VISIT.

Objective A) Develop attractive entrances and corridors.

ANALYSIS:

In making its recommendation regarding a proposed zoning change, the Planning and Zoning Commission shall consider the following factors.

1. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned; relationship to general area and the City as a whole.

Staff contends that the proposed zone change of this property to Industrial District is inappropriate and could have negative impacts on the area concerned and to City as a whole.

The subject property is situated with direct exposure to heavy traffic on State Highway 6, an inter-city thoroughfare and one of Bryan's major transportation arteries linking Bryan to the rest of the state.

The 1970 Bryan Comprehensive Plan, adopted prior to the construction of either bypass, envisioned the impact that those two planned roadways would have on the city. The plan states; *"A need will soon arise for land use controls along these thoroughfares to guard against undesirable development"*.

Citizen focus groups held in 1998 and 2006, listed the then current appearance along the major gateways into Bryan as a liability, preventing the future healthy growth of the community. The image and appearance of commercial activity along this and other corridors is a formally stated community priority, expressed not only in both of the last two Comprehensive Plans, but also most recently in City Council's 2007-08 Strategic Plan. The last large scale City-initiated annexation occurred in 1999 (6,368 acres) and included 1964 acres of land along all the major entry corridors for the specific purpose of controlling land use in an effort to protect or improve the aesthetics of those roadways.

Although the two properties adjacent to the subject tract along the North Earl Rudder Freeway (Texas Highway 6) frontage road are not zoned for industrial use, three tracts nearby long have been zoned for, and partially occupied by, light industrial uses. At this time however, development with industrial uses is very limited in those three areas. However, in light of the city's current emphasis on image and appearance and adopted land use policies, staff believes that approving this request and thereby allowing more investment in potentially unsightly and even noxious industrial uses on these entire 9.6 acres along a major entranceway into Bryan, is not appropriate and more importantly does not conform to repeatedly stated community objectives. So long as improving image and appearance along entry corridors is a stated community goal, staff believes that the City should continue to plan for accommodating true industrial uses in areas with little visibility from, but easy access to, major thoroughfares. Staff therefore contends that the subject property is inappropriate for Industrial District zoning but is entirely suitable for retail or commercial use that the applicant proposes.

2. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area and shall note the findings.

Adequate water and sewer infrastructure exists in this area. Bryan's Thoroughfare Plan envisions a future collector street immediately south of this tract, the right of way of which was dedicated by the landowner at the time of platting. Construction of future streets will depend on development pressure at the subject site and the surrounding area.

3. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development.

There are currently a number of acres near to the subject tract that are for zoned industrial use and that remain undeveloped. Staff believes that this zone change request, if approved, will add to the supply of land zoned for industrial development, but will not make land classified for similar development in the vicinity and elsewhere in the City unavailable for development.

4. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.

Within the past several years, several tracts in this vicinity have been rezoned to Industrial District, specifically along Clarks Lane. However, most of the land recently rezoned for industrial activity has not been developed as of the time this report is being written. None of the tracts recently rezoned to Industrial District in this area are located along a major corridor.

5. How other areas designated for similar development will be, or are unlikely to be affected if the proposed amendment is approved, and whether such designation for other areas should be modified also.

Bryan currently has a surplus of undeveloped property zoned for industrial use. For example, undeveloped industrial areas exist near the subject location along Clarks Lane, north of the Highway 21 East corridor and near the intersection of the North Earl Rudder Freeway and Harvey Mitchell Parkway (F.M. 2818). A considerable amount of undeveloped property zoned for industrial use also exists on the west side of Bryan including land in two industrial parks. If this zone change were approved, staff believes that other, perhaps more suitable sites already zoned for industrial use might not be fully utilized and industrial uses might appear at less desirable locations.

Staff contends that existing industrial zoning in certain areas of Bryan is no longer suitable for industrial development or continued industrial use for various reasons. This includes the three tracts near the subject property along the North Earl Rudder Freeway frontage roads. These properties were included in an Industrial zoning district 24 years ago with the initial adoption of zoning in Bryan. Subsequent to the adoption of zoning, land use plans and policies adopted by the City Council have featured this area of the bypass as desirable for heavy commercial, but not industrial uses. Based on these findings, Staff submits that a City-initiated rezoning of those properties may be advisable.

6. Any other factors affecting health, safety, morals, or general welfare.

Staff contends that there are specific uses allowed by right in the Industrial zoning district that, if placed in the location of the subject property, could adversely affect health, safety, morals, or general welfare. Examples include adult entertainment, concrete or asphalt batching plant, oil and gas well operations, oil field equipment storage yard, soil, crushed rock, gravel sales and storage, service facilities owned and operated by other municipalities, and wrecking yards (junkyards).

Staff finds that the type of development currently proposed on the subject property is appropriate in this location and does not represent true industrial use. The root of the clash in this case is the fact that the 24 year old Zoning Ordinance was, of necessity at the time of its passage, overly broad in its definition of both industrial use and outdoor display and storage of merchandise. Occasionally those two elements create barriers to orderly development as well as problems with enforcement. Specifically, outdoor storage is currently only permitted in the Industrial District, causing many business uses that typically would be permitted in less intense locations, to either locate in true industrial areas or forego outdoor storage of goods or even systematically violate the ordinance. Staff submits that careful amendment of the ordinance regarding types of outdoor storage will produce immediate beneficial results and allow business to operate efficiently without sacrificing long held community goals to accommodate them.

RECOMMENDATION:

Staff recommends **denying** industrial zoning as now requested. However, as mentioned above, staff believes that amendment of the Zoning Ordinance regarding the permitted use of various types of outdoor storage in commercial areas is appropriate and should be considered at the earliest opportunity. An amendment of this type would allow accommodation of a number of already existing as well as potentially new commercial uses. Staff believes that such a zoning text amendment would accommodate the particular use the applicant proposes for part of the subject tract. This alternative has been suggested during discussions between staff and the developer after the rezoning application was made.

EXCERPT FROM APPROVED MINUTES FROM THE PLANNING AND ZONING COMMISSION'S REGULAR MEETING ON FEBRUARY 5, 2009

8. Rezoning RZ09-02: Justin Whitworth

R. Haynes

A request to change the zoning classification from Agricultural-Open District (A-O) to Industrial District (I) on 31.82 acres of vacant land out of Stephen F. Austin League No. 10, A-63 adjoining the northbound frontage road of North Earl Rudder Freeway (State Highway 6) between Colson and Tabor Roads in Bryan, Brazos County, Texas.

Mr. Haynes presented a staff report (on file in the Development Services Department). Staff recommends denying the zoning request because of the following:

- a. The proposed zone change of this entire property to Industrial District could have negative impacts on the area concerned and to the City as a whole because the property is situated with direct exposure to heavy traffic on SH 6, and the image and appearance of commercial activity along this and other corridors is a stated community priority expressed in the Bryan Comprehensive Plan and the City Council's 2007-08 Strategic Plan,
- b. Additional water service is planned in this area, and Bryan's Thoroughfare Plan envisions a future collector street within this tract which would have to be dedicated by the landowner at the time of platting,
- c. This zone change request, if approved, will not make land classified for similar development in the vicinity and elsewhere in the City unavailable for development,
- d. Not all of the land recently rezoned for industrial activity has been developed at this time, and none of the tracts recently rezoned to Industrial District in this area are located along a major corridor,
- e. Bryan currently has a surplus of undeveloped property zoned for industrial use and if this zone change were approved, perhaps more suitable sites already zoned for industrial use might not be fully utilized and industrial uses might appear at less desirable locations, and
- f. There are specific uses allowed by right in the Industrial zoning district that, if placed in the location of the subject property, could adversely affect health, safety, morals, or general welfare.

Staff contends that a portion of the land within the subject tract, specifically that facing Clarks Lane, could be appropriate for industrial use.

Responding to questions from Commissioner Beckendorf, Mr. Haynes stated that industrial zoning exists on either side of the tract and that staff contends that this type of zoning is inappropriate for this location.

Responding to questions from Commissioner Horton, Mr. Haynes stated that the existing lots behind the property are zoned Mixed-Use Residential District, and that if the subject property were rezoned to industrial, there would be a 100 ft buffer requirement which could be reduced with landscaping.

Responding to a question from Commissioner Bond, Mr. Haynes stated that a Planned Development District would allow more selection in the type of businesses on the property.

Responding to questions from Commissioner Davila, Mr. Haynes stated that by zoning the subject property as industrial, the City loses control to achieve the City's goal of an "attractive place to live, work and visit."

Responding to a question from Commissioner Jones, Mr. Haynes stated that the Commission will make a recommendation to the City Council, who will vote to make the change in the ordinance.

Responding to a question from Commissioner Davila, Mr. Haynes reiterated that the portion of the property that has access to Clarks Lane might be appropriate for industrial zoning for such uses as open storage.

Responding to a question from Commissioner Maxwell, Mr. Haynes stated that most, if not all, existing development along the highway near the subject property predates zoning.

The public hearing was opened.

Mr. Deryl Emola, 2527 Clarks Lane, came forward to speak in opposition to the request. He stated that he does not want commercial businesses or industrial uses next to his property. He asked the Commission to consider protecting his property. He presented a letter from a neighbor, as well as pictures of the property and surrounding areas.

Mr. Mark Gellar, 2619 Clarks Lane, came forward to speak in opposition to the request. He stated that he agreed with Mr. Emola, and that he would lose value in his property were this request granted.

Mr. Justin Whitworth, 2703 Palmer Hills, applicant, came forward to speak in favor of the request. He stated that he respected the neighbors' opinions, but pointed out that buffering requirements go into effect upon rezoning. He stated that he will write in the restriction of adult businesses into the deed restrictions, and that he is hoping to put in a farm equipment distributor. He stated that he believes the highest and best use of this tract is for industrial use.

Responding to questions from Commissioner Bond, Mr. Whitworth stated that an industrial zoning will be easier to advertise to a developer and that there is a synergy that exists when industrial users can locate near each other. He also stated that he has submitted a preliminary plat for consideration by the City, and that he hopes to have a tractor-oriented farm sales business on the property.

Mr. Emola stated that while the applicant may have the best intentions for the property, a developer could put any use on it were the property to be sold.

Ms. Sharon Anderson, 2304 Cindy Lane, came forward to speak against the request. She stated that the City cannot enforce deed restrictions, and that she agrees with staff that industrial zoning is not appropriate for this area.

The public hearing was closed.

Commissioner Beckendorf moved to recommend denial of Rezoning RZ09-02 to the Bryan City Council and, in accordance with Section 130-42(g) of the Bryan Code of Ordinances, to adopt the written staff report and analysis, as the report, findings and evaluation of this Commission and, in accordance with Section 130-42(h) of the Bryan Code of Ordinances, to offer the staff report and analysis to the applicant as the reason for the denial. Commissioner Davila seconded the motion.

Commissioner Beckendorf stated that he agreed with the staff report.

Commissioner Bond stated that he agreed with the staff report and the adjoining homeowners, but that he would like to see this become a Planned Development because this property has commercial and industrial advantages.

The motion passed with a unanimous vote. Chairperson Clark did not participate in discussion or voting on this item due to a conflict of interest.